

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 033-14, was published in Register No. 700, on April 30, 2014, and approved by State Superintendent Tony Evers, on May 13, 2014. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The State Superintendent of Public Instruction hereby proposes to amend PI 11.36 (11) (a), relating to identification of children with significant developmental delay (SDD).

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Subchapter V of ch. 115, Stats.

Statutory authority: Subchapter V of ch. 115, Stats., and 227.11 (2) (a) (intro), Stats.

Explanation of agency authority:

Under s. 227.11 (2) (a) (intro), Stats., "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." As such, ch. PI 11 is required to effectively implement and provide transparency to the programs involving children with disabilities under Subchapter V of ch. 115, Stats.

Related statute or rule: None.

Plain language analysis:

20 U.S.C. 1401(3)(B) permits the identification of children with significant developmental delay (SDD) through the age of nine rather than six. The proposed rule change will consider children ages 3 through 9 who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development to have a significant developmental delay.

Summary of, and comparison with, existing or proposed federal regulations: N/A.

Comparison with rules in adjacent states: N/A.

Summary of factual data and analytical methodologies:

Allowing a child with SDD to be identified through the age of nine will provide a longer window of time to assess whether the child has a specific disability, thus addressing difficulties with accurate assessment and labeling certain children beyond age 6 who are still in need of educational interventions.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A.

Effect on small business:

The proposed rules will have no economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person: (including email and telephone)

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Place where comments are to be submitted and deadline for submission:

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at Carl.Bryan@dpi.wi.gov. The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

SECTION 1. PI 11.36 (11) (a) is amended to read:

PI 11.36 (11) (a) Significant developmental delay means children, ages 3, ~~4 and 5~~ through 9 years of age ~~or below compulsory school attendance age~~, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development.

SECTION 2. STATEMENT OF EMERGENCY:

FINDING OF EMERGENCY

The Department of Public Instruction finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

An emergency rule is needed so this rule change is in effect prior to the beginning of the 2015-16 school year. This will ensure that identification of children with significant development delay is performed consistently throughout the school year. If this rule is not effective prior to the beginning of the school year, school districts will have to implement one set of procedures for part of the school year and then change procedures when the rule takes effect. This would make implementation of the change in identification of significant development delay more difficult and would result in children being treated differently based on when they were evaluated.

SECTION 3. EFFECTIVE DATE:

The rules contained in this order shall take effect on July 1st, 2015.

Dated this ____ day of _____, 201__

Tony Evers, PhD
State Superintendent